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Appeal of Norman L. and Penelope A. Sakamoto

On their joint California personal **income tax** return for 1973, appellants Norman L. and Penelope A. Sakamoto claimed a moving expense deduction in the amount of **\$2,524.30**. This amount allegedly represented the expense of moving from California to Hawaii in order to accept employment in that state. Appellants did not report as gross income any payment for or reimbursement of **this** expense. Respondent disallowed the deduction, and **this** appeal followed.

In support of the claimed deduction, appellants rely on certain statements appearing in the instruction sheet which accompanies respondent's form **540NR**. However, absent unusual circumstances, none of which are present in this appeal, respondent is not bound by omissions or ambiguities in its tax forms. (Appeal of Arden K. and Dorothy S. Smith, Cal. St. Bd. of Equal., Oct. 7, 1974.) In order to determine the deductibility of the expenses in question, therefore, we turn to the statute under which the deduction is claimed.

**Revenue and Taxation** Code section 17266 allows a deduction for certain moving expenses of the taxpayer. The deduction is limited by subdivision (d) of that section, however, which provides in relevant part:

In the case of an individual...whose former residence was located in this state and his new place of residence is located outside this state, the deduction allowed by this section shall be allowed only if any amount received as payment for or reimbursement of expenses of moving from one residence to another residence is includable in gross income as provided by Section 17122.5 and the amount of deduction shall be limited only to the amount of such payment or reimbursement or the amounts specified in subdivision (b), whichever amount is the lesser.

Although section 17266 is patterned after section 217 of the Internal Revenue Code of 1954, the limitation contained in subdivision (d) has no counterpart in the federal statute.

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Here appellants moved from their old residence in California to a new residence in Hawaii. The allowable moving expense deduction is therefore limited to the lesser of: (1) any amount received as payment or reimbursement for the move which is includable in their gross income under section 17122.5 of the Revenue and Taxation Code; and (2) various other amounts. Since appellants apparently received no such payments or reimbursements, they are not entitled to a moving expense deduction under section 17266.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Norman L. and Penelope A. Sakamoto against a proposed assessment of additional personal income tax in the amount of \$7.78 for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of May, 1977, by the State Board of Equalization.

Steve Barnett, Chairman  
John L. Herrin, Member  
George C. Jensen, Member  
Iris Sankey, Member  
\_\_\_\_\_, Member

ATTEST: JOJO Bell, Executive Secretary